

Allocation of taxing rights in Tax Treaties between Developing and Developed countries

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Impact Paragraph

The aim of this doctoral thesis is to determine whether the criteria / principles which govern the treatment of passive investment income in double taxation conventions (DTCs) between developing and developed countries are effective and appropriate for the interests of developing countries.

This research was conducted in a period totally overwhelmed by the concept of tax abuse, and therefore, cross-border erosion of countries' tax bases. In that context and taking into consideration that I am strongly if not doggedly motivated to understand the underlying justification of the principles that history and society impose on us as natural truths, I exerted great effort to think out of the box regarding diagnostics, reality, and potential solutions. Moreover, the effort expended to avoid being influenced by the ideological pressure that international organizations have historically put on developing countries. The analysis and outcome travelled a unique route, granting independence in the intent of collaborating not only with developing but also with developed countries by offering fresh concepts that could help in the challenging task of grant fairness in DTCs between developing and developed countries. This was done with the understanding that, at least for developing countries, DTCs must help in the route to development.

The study analysed the economic aspects underlying the principles that have governed the allocation of taxing rights in DTCs between developing and developed countries plus the historical evolution of those DTCs. Elements such as attracting foreign investment, access to useful foreign debt, and access to useful technology were considered by the author as the most relevant elements when questioning a DTC's treatment of dividends, interests, and royalties, respectively. Relevant facts were discussed and examined, including that current international tax policy on this matter is focused on the developed world, and that historical concessions made by developing countries are the reason for the actual state of the matter. The right to development is also included in the analysis. The combination of elements demonstrates that a fair international tax equilibrium and sound tax policy therefore need to

be found. The author believes that the needs of developing countries to raise their economies and to protect their domestic tax base should not be disregarded or silenced.

On the practical side, the research starts from the premise that DTCs between developing and developed countries do not contribute on the route of developing countries to development. The rationale behind this premise is that DTCs only focus their efforts on the elimination of international double taxation, a role well assumed as evidenced in the positive evolution of domestic laws in the last decades. This study questioned the historical tendency of developing countries' negotiators who, when negotiating s DTC with developed countries, put as a priority the amount of taxing rights. The author criticizes this approach and puts development before taxation. Due to the lack of doctrine on the matter, it is possible to find, throughout the whole work, the author's own ideas as a basis for proposals. If the proposals are executed, it is expected that benefits will accrue to all actors, i.e. to developed countries, to developing countries, to investors resident in developed countries, and to investors resident in developing countries. Special expectations are in relation with the assistance in the development process of developing countries through the increment of beneficial foreign investments, easy access to useful foreign debt, and easy access to beneficial technology/intangibles. Although DTCs alone cannot determine the success of economic growth and development, they can nevertheless aid in this process.

The actual worldwide public health crisis that we are facing is hitting the whole world hard. Developing countries will be tremendously affected and economic inequalities will only be exacerbated. This crisis has already sharply exposed the global economy's pre-existing weaknesses, setting back development progress around the world. The crisis will potentially make the goal of development for many developing countries fade into the background and generate a drastic change in the order of priorities. As most politicians and economists from the developing world are already commenting, focusing on recovering jobs, migration, health, and access to food will be the challenges of developing countries probably for the next decade. On this unfortunate scenario, this work can contribute to re-thinking international tax principles that govern the allocation of taxing rights in DTCs with direct effect on incentives to foreign investments, access to useful foreign debt, and access to useful

technology. The author is convinced that these changes could incentivize trade and investment and, therefore, help to enhance developing countries' economies with the aim of staying true to the route to development.

Finally, and regarding the proposals, all of them share the same principle: eliminate tax obstacles generated by DTCs in the interaction of developing and developed economies. The above can be achieved by taxing only at one level. In simple words, the author proposes principles similar to those that sustain the taxation of dividends, interests, and royalties in the European Union – internal market - to be applied in DTCs between developing and developed countries. The criteria used by the author to determinate which country should keep the taxing right was to analyse in-depth the economic link between income and the relevant country.